

ORIGINAL

IN THE United States District Court  
For the district of Delaware

Kevin C. Brathwaite  
Plaintiff

CA. NO. 04-01542 - G.M.S.

Major Charles Cunningham,  
Lieutenant Godwin,  
Sgt. Lovett

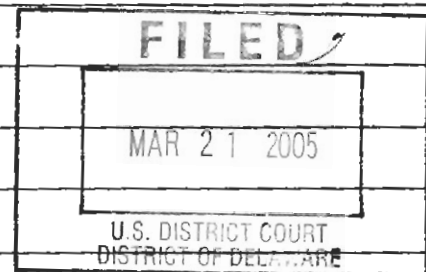
C/O V. DUNN

C/O DON Overmeyer

Nurse BOB Harris

DR. RAMAN, Nurse Amy White  
Defendants

Jury Trial Demanded



### First Amended Complaint

For his First Amended Complaint against  
defendants Warden Thomas Carroll et al  
Major Charles Cunningham, Lieutenant Godwin  
Sgt. Lovett, C/O V. DUNN, C/O DON Overmeyer,  
Nurse BOB Harris, DR. RAMAN, Plaintiff  
Kevin C. Brathwaite alleges as follows:

### Jurisdiction and Venue

1. This Court has jurisdiction pursuant to  
28 U.S.C. § 1331. This action arises under  
the Constitution / laws, or treaties of  
the United States.

2. This Court also has Supplemental Jurisdiction over this Action pursuant to 28 U.S.C. § 1367.
3. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1391 (A)(2). The Subject Matter of this Action arose in this district, and the parties are subject to personal jurisdiction in this district.
4. Plaintiff Kevin C. Brathwaite, is an inmate in the custody of the Delaware Department of Correction, currently being housed at the Delaware Correctional Center, 1181 Paddock Rd. Smyrna DE. 19977.
5. This Amendment to the original Complaint is to Amend the following defendants.
6. Defendant Major Charles Cunningham, is the Security Superintendant at the Delaware Correctional Center. Major Cunningham was the Security Superintendant at D.C.C. at the time of these incidents.
7. Defendants Lieutenant Godwin is the Area Supervisor at the Delaware Correctional Center. Lieutenant Godwin

WAS the Area Lieutenant At D.C.C.  
At the time of these incidents.

8. Defendant Sgt. Lovett is a lead worker  
At the Delaware Correctional Center.  
Sgt. Lovett was the lead worker At  
D.C.C. At the time of one of these  
incidents.

9. Defendant C/O V. DUNN is a Correctional  
Officer At the Delaware Correctional  
Center. C/O V. DUNN WAS Working At  
D.C.C. At the time of These incidents.

10. Defendants C/O D. Overmeyer is a  
Correctional Officer At the Delaware  
Correctional Center. C/O D. Overmeyer WAS  
Working At D.C.C. At the time of these  
incidents.

11. Defendants Nurse Bob Harris is an  
employee of First Correctional Medical  
INC. Nurse Bob Harris WAS Assigned  
to the Delaware Correctional Center  
At the time of these incidents

12. Defendant DR. RAMAN is an employee  
of First Correctional Medical INC.  
DR. RAMAN WAS Assigned to the  
Delaware Correctional Center At the  
time of these incidents.

13. Defendant Nurse Amy Whittle is an employee of First Correctional Medical Inc. Nurse Amy Whittle was assigned to the Delaware Correctional Center at the time of these incidents.

### FACTUAL ALLEGATIONS

14. Plaintiff Kevin C. Brathwaite is an inmate that is being housed at the Delaware Correctional Center, in Smyrna Delaware.

15. During the dates of October, 10<sup>th</sup>, 2004 thru February, 24<sup>th</sup>, 2005 MR. Brathwaite was housed in the infirmary at the Delaware Correctional Center.

16. ON December, 15<sup>th</sup>, 2004 MR. Brathwaite was laying down on the floor in cell # 191 in the infirmary, and ~~B~~ MR. Brathwaite was assaulted with a dangerous weapon by three Correctional officers while he was sleeping.

17. MR. Brathwaite filed a grievance regarding the assault that took place and experienced numerous retaliatory actions from that staff at the Delaware Center after internal



Affairs investigated the assault.

18. ON OCTOBER, 22<sup>nd</sup>, 2004 AN OFFICER WENT TO MR. BRATHWAITE'S CELL AND TOLD HIM THAT SHE HAD BEEN ORDERED TO CONFISCATE ALL OF HIS LEGAL MATERIAL AND PAPERWORK. MR. BRATHWAITE WAS THEN TOLD THAT HE WAS NO LONGER ALLOWED TO EXERCISE HIS RIGHT TO THE COURTS OR ANY ATTORNEY'S, OR FAMILY

19. FROM OCTOBER, 10<sup>th</sup>, 2004 THRU FEBRUARY, 24<sup>th</sup>, 2005 MR. BRATHWAITE WAS TOLD THAT HE WAS NOT ALLOWED TO RECEIVE MAIL FROM HIS FAMILY AND FRIENDS, NOR WAS HE ALLOWED TO RECEIVE HIS SUBSCRIPTIONS TO THE NEWS JOURNAL NEWSPAPER AND OR OTHER MAGAZINE SUBSCRIPTIONS THAT HAD ALREADY BEEN PAID FOR BY MR. BRATHWAITE.

20. FROM OCTOBER, 10<sup>th</sup>, 2004 THRU FEBRUARY 24<sup>th</sup>, 2005 MR. BRATHWAITE WAS ONLY ALLOWED TO BRUSH HIS TEETH THREE TIMES PER WEEK, CAUSING MR. BRATHWAITE TO DEVELOPE DENTAL PROBLEMS WHERE THERE WAS NONE PRIOR TO THIS ABUSE.

21. ON JANUARY, 6<sup>th</sup>, 2005 THE FACILITY PATALOGAL WAS TOLD THAT HE IS NOT ALLOWED TO ASSIST MR. BRATHWAITE WITH

ANY legal matters nor is he allowed to discuss ANY legal matter with MR. Brathwaite, whatsoever.

22. From November, 9<sup>th</sup>, 2004 thru February, 24<sup>th</sup>, 2005 MR. Brathwaite experienced daily harassment and retaliation from officers that were ordered to shake down him and his cell three times per day on every shift.

23. From January, 6<sup>th</sup>, 2005 thru February, 24<sup>th</sup>, 2005 MR. Brathwaite was housed in a cell with a camera inside the cell and an officer posted in front of his cell door twenty four hours per day and was still harassed and retaliated against daily with three shake downs and cell searches per day on every shift.

24. From January, 6<sup>th</sup>, 2005 thru February, 24<sup>th</sup>, 2005 MR. Brathwaite was forced to sleep on an ice cold floor completely naked, because his mattress was confiscated from him. This form of harassment and retaliation was a constant, even through the snow storms and cold weather.

25. From, January, 6<sup>th</sup>, 2005 thru February, 24<sup>th</sup>, 2005 there was no heat in the

Cell that MR. Brathwaite was housed in AND the air vent only blew cold air twenty four hours per day, AND he was still completely NAKED.

26. From January, 6<sup>th</sup>, 2005 thru February, 24<sup>th</sup>, 2005 the nurses in the infirmary were told not to give MR. Brathwaite anything.

27. From JAN, 6<sup>th</sup>, 2005 thru February, 24<sup>th</sup>, 2005 MR. Brathwaite was denied his right to file any grievances or utilize the grievance system in any way.

28. AS A RESULT OF the actions of these defendants, MR. Brathwaite was subjected to cruel and unusual punishment, His constitutional right to due process was violated, His health AND safety was put in jeopardy AND he was a victim of retaliation AND harassment.

COUNT I  
(42 U.S.C § 1983)

29. MR. Brathwaite realleges AND incorporates by reference herein the allegations in paragraphs 1-28 of this complaint.

30. IN VIOLATION OF 42 U.S.C. § 1983, These defendants, acting in their individual AND official capacities, Subjected MR. Brathwaite to cruel AND UNUSUAL punishment under the color of State law through their deliberate indifference, the blatantly illegal treatment that MR. Brathwaite WAS subjected to.

31. Despite their knowledge AND awareness of the constitutional rights which are provided to every person, these defendants failed to take measures to protect the constitutional rights of MR. Brathwaite.

32. Defendants deliberate indifference to inhumane treatment in which MR. Brathwaite was subjected to, resulted in MR. Brathwaite suffering physically AND mentally.

COUNT II  
(Gross Negligence)

33. MR. Brathwaite realleges AND incorporates by reference herein the allegations in paragraphs 1-32 of this Complaint.



34. Defendants acting in their individual capacities, exhibited an extreme departure from the ordinary standard of care and custody in failing to take reasonable precautions that would have protected the constitutional rights of MR. Brathwaite, and kept him safe from cruel and unusual punishment, harassment and retaliation.

Wherefore, Plaintiff, Kevin C. Brathwaite respectfully demands the following relief:

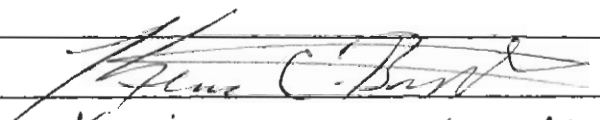
A. That this honorable court enter judgement for MR. Brathwaite against for damages, both punitive and actual, in an amount to be proven at trial.

B. That this honorable court enjoin defendants from housing MR. Brathwaite and or anyone else in conditions that pose risk to health, safety by violating their constitutional rights and subjecting them to cruel and unusual punishment. And order defendants to promulgate appropriate policies and procedures to accomplish that objective.

C- For Such other and Further relief that this Court deems appropriate under the circumstances.

Jury Demand

Kevin C. Brathwaite demands a trial by jury of any issues triable of right by a jury.

  
Kevin C. Brathwaite

dated: March, 2<sup>nd</sup>, 2005